

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FREDERICK CLAYTON GRAY,	)	
	)	
Petitioner,	)	
	)	1:19CV342
v.	)	1:06CR103-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

The Recommendation of the United States Magistrate Judge [Doc. #62] was filed with the court in accordance with 28 U.S.C. § 636(b) and, on March 11, 2020, was served on the parties in this action. Upon review of Petitioner's filing related to the First Step Act of 2018, the Magistrate Judge found Petitioner to be eligible for relief because he was convicted of a covered offense and was sentenced under the statutory provisions in effect prior to August 3, 2010, but determined that "sentencing him 'as if' the Fair Sentencing Act had been in effect at his initial sentencing would not produce a change in the applicable statutory penalties or his sentencing range under the United States Sentencing Guidelines, which was calculated under career offender provisions". (Recommendation at 1-2).

The following month, the Fourth Circuit Court of Appeals published its opinion in United States v. Chambers, 956 F.3d 667 (2020), prompting the Magistrate Judge to order that the Recommendation be stayed while Petitioner was afforded the opportunity to file notice by August 19, 2020 that he intended to

proceed with the First Step Act Motion and warning him that if he failed to do so the case would be dismissed without prejudice for failure to prosecute and failure to comply with the Court's Order. (Order [Doc. #65].) Petitioner neither responded to the Recommendation nor filed the required notice.

After reviewing Petitioner's indictment, plea agreement, and presentence report and considering his failure to communicate with the Court despite being warned that the case would be dismissed as a result, IT IS HEREBY ORDERED that the stay in this matter is lifted and that this action is dismissed without prejudice for failure to prosecute and failure to comply with the Court's Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 3rd day of September, 2020.

/s/ N. Carlton Tilley, Jr.  
Senior United States District Judge